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U.S. Citizenship and Immigration Services

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MAR 3 0 2007

FILE: [redacted] Office: MANILA, THE PHILIPPINES Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge (OIC), Manila, the Philippines denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted], is a native and citizen of the Philippines who was found to be inadmissible under section 212(a)(9)(B), 8 U.S.C. § 1182(a)(9)(B), for having accrued more than one year of unlawful presence in the United States, departing, and seeking readmission within 10 years of such departure. In order to reunite with her U.S. citizen (USC) husband and their USC daughter, the applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The record reflects that [redacted] entered the United States on September 27, 1995 as the beneficiary of a K-1 fiancé(e) visa. She married her petitioning fiancé but did not adjust status through him. The adjustment application she filed through her petitioning fiancé on May 28, 1996, was denied on March 12, 1998. She married her current husband, [redacted] on April 20, 2001. She departed the United States on October 18, 2003 to benefit from a K-1 visa petition filed by [redacted]. Accordingly, she accrued more than one year of unlawful presence between the time her first adjustment application was denied and the time she left the United States. On August 17, 2004, the Acting OIC found [redacted] to be inadmissible to the United States and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Acting OIC's decision, dated August 17, 2004.*

On appeal, counsel submits a brief and documentation not previously submitted. The record includes the following evidence: a psychological evaluation of the applicant by [redacted], a licensed clinical social worker; a hardship statement from [redacted]; a medical report indicating that in October 2003 [redacted] had a breast mass that potentially required a surgical biopsy; medical records indicating that [redacted] had polyps surgically removed from his colon in 2003; the U.S. Department of State, *Country Reports on Human Rights Practices – 2003*, February 25, 2004; U.S. Department of State, *Philippines – Consular Information Sheet*, May 25, 2004; U.S. Department of State – *Philippines – Public Announcement*, April 28, 2004; Mr. [redacted]'s naturalization certificate; a sworn statement from [redacted] USC mother; sworn statements from both of [redacted]'s lawful permanent resident (LPR) sons; a sworn statement from [redacted]'s LPR sister; a sworn statement from [redacted]'s LPR brother; sworn statements from [redacted]'s USC sister; proof of citizenship of the applicant's USC daughter, [redacted]; a letter from [redacted] second grade teacher; a letter from [redacted] supervisor at Holy Cross Hospital, where [redacted] works as a distribution clerk; a letter from the Supervisor of Social Work at Holy Cross hospital; letters from two family friends; a letter from [redacted]; photographs of the family; credit card statements, including telephone charges for calls between Florida and the Philippines; earnings statements; and income tax records. The AAO reviewed the record in its entirety before reaching its decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .

> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or LPR spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute, nor is hardship to her USC child. Thus, hardship suffered by [redacted] will be considered only insofar as it results in hardship to a qualifying relative, in this case, the applicant's USC husband, [redacted]

If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; s*ee also Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch,* 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Philippines or in the United States, as he is not required to reside outside the United States

based on the denial of the applicant's waiver request. The AAO now turns to a consideration of the relevant factors in this case.

[redacted] contends that he would experience extreme hardship were he to continue to live in the United States without the applicant. He states that he is the sole breadwinner in his family and is now responsible for the monthly expenses of his wife in the Philippines as she is unable to find employment, as well as the added costs of communicating with her by telephone. *See* [redacted] *statement; bills for telephone calls to the Philippines*. He states that he must accept financial help from his sons because with his wife in the Philippines his expenses exceed his income. Such financial dependence, he contends, is very stressful for him. *See* [redacted] *statement.* [redacted] also indicates that it has been an extreme hardship for him to care for [redacted] without his wife. He states that [redacted] reaction to her mother's absence also affects him: "This little girl means the world to me, as she is the only link I have to her mother at the moment, and to see her so upset is heart wrenching." *Id.* Counsel asserts that [redacted] has been overburdened by having to be a single parent to [redacted] and that he will have to address all of [redacted] day-to-day issues with very limited assistance of the applicant because of their separation. *See counsel's brief.*

[redacted] states that he was operated on for colon cancer in 2003 and that [redacted] provided him with the strength to recover. He indicates that he will require regular follow-up care. He also reports that he is distressed by the fact that [redacted] has been diagnosed with a mass in her right breast that probably needs removal but does not have access to the health care system in The Philippines and will not have the quality of care she could receive in the United States. [redacted] *statement.*

[redacted] asserts that since his wife's departure he has been very depressed and anxious, indicating that his mental and physical state continues to deteriorate each day that they are apart. In support of his statements, the record contains an evaluation from [redacted] a licensed clinical social worker, who finds Mr. [redacted] to have severe recurrent, major depressive disorder and generalized anxiety disorder. *See evaluation from* [redacted] The record also includes letters from [redacted] supervisor and a clinical social worker at the hospital where he works that indicate his separation from his wife has resulted in sadness and depression at work. *See letters from supervisor and clinical social worker at the hospital where* [redacted] *works.* [redacted] asserts that he has lost almost 20 pounds since being separated from his wife. *See his hardship statement, his mother's statement, letter from his supervisor, and letter from a social worker at the hospital where he works.*

The psychological evaluation conducted by [redacted] concludes that because of past events in his life, specifically his mother's abandonment of him and the death of a previous partner, that:

> [E]ach time [redacted] experiences a separation in his significant relationships, he cannot maintain emotional stability and immediately spirals downward into a severe depression as evidenced by his severe depressive responses when he is separated from his grown children. . . .
>
> For [redacted], given his history of losses, it is likely, within a reasonable degree of psychological certainty, that he would fear abandonment in his adult relationships and that his

> unresolved fears would carry an intensity that would negatively affect his ability to tolerate yet another traumatic loss . . .
>
> . . .
>
> Suicide is always the greater concern when treating depressed patients. It is what makes depression such a lethal mental illness. . . . passive suicidal ideation must always be taken seriously especially when a patient has a lifelong history of severe, chronic depression and loss such as [redacted]

While the AAO notes the hardships described by [redacted] and acknowledges [redacted] evaluation of his emotional state, it does not find the record to establish that [redacted] would experience extreme hardship if the applicant were to continue to be inadmissible to the United States.

Although [redacted] states that he had colon cancer surgery in 2003 and must face the possible recurrence of his cancer, the record indicates only that he underwent a colonoscopy during which multiple nonmalignant polyps were removed. His claim that his wife does not have access to the Philippine medical system to deal with her health problems is also not documented in the record. While the AAO acknowledges that the medical care available to [redacted] in the Philippines might not be of comparable quality to that she would receive in the United States, the record offers no proof that medical care is unavailable or that it would be inadequate. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

[redacted] contends that his wife's removal has doubled the financial burden on him, in part since he must send her $300 each month because she is unable to find employment in the Philippines and that he is required to borrow money from his sons. Although the record provides credit card statements, which include charges for telephone calls to the Philippines, there is no other documentation that would establish the monthly financial commitments that [redacted] indicates are his in his sworn statement of June 18, 2004, including the $300 he states he send his wife. The record also includes no documentation of the financial assistance provided to the applicant by his sons or the extent of that assistance. Moreover, the record includes no evidence that would establish that [redacted] is unable to find employment in the Philippines to reduce the financial burden on her husband. Again, going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici.*

In response to the acting OIC's request for evidence and on appeal, counsel contends that [redacted] is overburdened by his role as a single parent and that he must face all of [redacted]'s day-to-day needs with only minimal assistance from the applicant. However, an October 16, 2003 statement from [redacted]'s sister-in-law, [redacted], indicates that, prior to [redacted]'s departure from the United States, she was [redacted]'s legal guardian and that [redacted] lived in her home. [redacted]t indicates in her letter that she and her husband are moving to a new address and that [redacted] will move with them, although she will still be close enough to her parents to be able to go back and forth "as needed." *See letter from* [redacted], dated

October 16, 2003. Accordingly, the record does not establish that [redacted] would, as counsel contends, have all the responsibilities of a single parent were his wife to remain outside the United States.

The AAO also finds the psychological evaluation of the applicant by [redacted] to be of limited evidentiary value. Although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the present case is based on a single interview with [redacted]. While [redacted] found Mr. [redacted] to have a major depressive disorder and recommended that he be referred for psychological treatment with a Florida State licensed mental health professional, her conclusions do not reflect the insight and elaboration commensurate with an established relationship, thereby rendering her findings speculative and diminishing the evaluation's value. In that the record fails to reflect an ongoing relationship between Mr. Aquino and a mental health professional or any history of treatment for the depression and anxiety he states he has suffered since the applicant's departure, it does not support a finding that [redacted] depression and anxiety constitute extreme hardship.

Counsel also asserts that [redacted] would suffer extreme psychological and financial hardship if he went to live with [redacted] in the Philippines to avoid further separation from her. *I-290B and brief.* [redacted] states that all of his close family members live permanently in the United States, including his two adult sons, his mother, father, and siblings. *See sworn statements from* [redacted] *and various family members.* If he were to live in the Philippines to avoid separation from his wife, it would mean separation from a large support network of close family that includes his two sons, both of his parents, and his siblings. *Id.* Counsel asserts that, in addition to separation from his family, relocation to the Philippines would result in extreme financial hardship, as he would be giving up a steady job that he has held for many years and going to a country with high levels of unemployment and where wages are extremely low. *See Brief.* Counsel also contends that [redacted] would be at risk because of the dangers that exist in the Philippines for U.S. citizens. In support of these claims, counsel has submitted country conditions information for the Philippines, including *Country Reports on Human Rights Practices – 2003*, Department of State, February 25, 2004; and State Department Travel Advisories for the Philippines, dated April 28, 2004 and May 25, 2004.

While the AAO acknowledges that relocating to the Philippines would result in [redacted]'s separation from his U.S.-based family and would require him to obtain new employment, the record does not establish that these challenges would constitute extreme psychological and financial hardship for [redacted]. The record provides no evidence that addresses the effect of such a separation on [redacted]'s emotional health. The psychological evaluation in the record considers only the effect of [redacted]'s continued separation from his wife. The record also fails to establish that a move to the Philippines would result in extreme financial hardship. The applicant has submitted no evidence to establish the employment situation he would face if he joined his wife in the Philippines and counsel has failed to document her claims that financial disaster would face [redacted] as a result of high levels of unemployment and low wages in the Philippines. Further, while the AAO notes the country conditions information in the record that provides an overview of human rights abuses and security concerns in the Philippines, this generalized information is insufficient proof that Mr. [redacted] would personally be at risk if he moved to the Philippines.

Although the AAO acknowledges that [redacted] has experienced hardship as a result of his separation from his wife, the record offers no proof that such hardships would be extreme. U.S. court decisions have held that

the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. §1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.